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Attorney for the Chapter 7 Trustee

**IN THE UNITED STATES BANKRUPTCY COURT  
FOR THE DISTRICT OF MONTANA**

In Re:

**DONNA MOHLER and SEAN MOHLER**

**Case No. 19-60025**

Debtors

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**CHAPTER 7 TRUSTEE'S MOTION TO APPROVE A SHORT SALE  
OF REAL PROPERTY FREE AND CLEAR OF LIENS AND INTERESTS  
PURSUANT TO 11 U.S.C. § 363 AND CARVE OUT AGREEMENT BETWEEN  
SECURED LENDER AND THE ESTATE**

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Darcy M. Crum, Chapter 7 Trustee for the above-referenced Debtors, pursuant to Sections 105 and 363 of the Bankruptcy Code, moves the Court for authority to sell certain real property free and clear of all liens, encumbrances, and interests. In support thereof, the Trustee states as follows:

**JURISDICTION**

1. This Court has jurisdiction to consider this Motion pursuant to 28 U.S.C. §§ 157 and 1334. This matter is a core proceeding within the meaning of 28 U.S.C. § 157(b)(2)(A), (M), (N), and (O).
2. Venue is proper before this Court pursuant to 28 U.S.C. §§ 1408 and 1409.

3. The basis for the relief requested are 11 U.S.C. §§ 363(b), (f), and (m), Federal Rules of Bankruptcy Procedure 2002 and 6004.

BACKGROUND

4. Debtors filed this Chapter 7 Bankruptcy on January 8, 2019. Darcy M. Crum was appointed the Chapter 7 Trustee on January 8, 2019.

5. Debtors listed a 100% ownership interest in the real property located at 3305 14TH ST NE GREAT FALLS, MT 59404 (the “Property”) and legally described as follows:

THE LAND REFERRED TO HEREIN BELOW IS SITUATED IN THE COUNTY OF CASCADE, STATE OF MONTANA, AND IS DESCRIBED AS FOLLOWS:

LOT 8, BLOCK 2, WATERTOWER PARK ADDITION, TO THE CITY OF GREAT FALLS, LOCATED IN THE NE1/4NE1/4 OF SECTION 36, TOWNSHIP 21 NORTH, RANGE 3 EAST, PMM, CASCADE COUNTY, MONTANA, ACCORDING TO THE PLAT NO. P-2009-0000007, FILED MARCH 12, 2009, RECORDS OF CASCADE COUNTY, MONTANA.

6. Debtors scheduled the Property as having a value of \$365,000.00 subject to a mortgage in favor of Mr. Cooper (the “Secured Creditor”) of approximately \$358,521.78 as of the petition date. The Secured Creditor possesses a valid, perfected, enforceable and unavoidable first mortgage lien on the Property by virtue of a promissory note and mortgage recorded in the Official Records of Cascade County, Montana, consisting of principal and interest (the “Secured Creditor Indebtedness”). There are no junior lienholders and the Debtors did *not* claim a homestead exemption in the Property.

7. The Trustee has determined it is in the best interest of the Debtors’ estate and all creditors to obtain the Secured Creditor’s agreement and consent to sell the Property, release the mortgage and waive all of its claims against the estate with respect to the Property (including any deficiency claims resulting from the proposed sale); and agree to a 11 U.S.C. §506 surcharge to pay all of the expenses associated with the proposed sale, including the payment of a 6% realtor commission to BK Global Real Estate Services (“BK Global”) and REMAX of Great Falls as co-

realtors (Order on Application to Employ, Dkt. #24) and reimbursement of their out-of-pocket expenses, and provide a carve out for the benefit of allowed unsecured creditors of the Debtors' estate.

8. The Trustee Handbook specifically permits carve-outs from a secured creditor, provided the carve-out will result in a meaningful distribution to unsecured creditors, whether priority or unsecured.

RELIEF REQUESTED

9. The Trustee desires to sell the Property to Dylan Anderson and McKinzie Horton, of Great Falls, Montana, free and clear of all liens, claims, encumbrances, and interests pursuant to 11 U.S.C. 363, in the amount of \$317,500.00 according to the terms of the Buy-Sell Agreement and Addendum, attached hereto as Exhibit A, but otherwise "As-Is, Where-Is" and without representations or warranties of any type, express or implied, being given by the Trustee and her professionals. The Trustee believes the price is fair based on the realtor's valuation of the property and because the sale price was negotiated pursuant to an arm's-length transaction.

10. The Secured Creditor has approved the offer and consents to the Property's sale and the creation of a carve-out for the Bankruptcy Estate of \$15,875.00. The carve-out will provide a recovery for unsecured creditors.

11. The Secured Creditor has agreed to pay at closing all closing costs, outstanding real estate taxes, including any prorated amounts due for the current tax year; and the carve out to the Trustee. A summary of the anticipated sale proceeds and their application is set forth in the estimated settlement statement, attached hereto as Exhibit B:

Gross Sales Price	\$317,500.00
Payoff to Mr. Cooper	\$276,127.76
Realtor Commission	\$19,600.00

Other closing costs (estimated) (including taxes, title insurance)	\$6,500.00
Carve out to the Estate	\$15,875.00

12. Pursuant to Section 363(f)(2) of the Bankruptcy Code, the Trustee may sell property free and clear of any interest in such property of an entity other than the estate if the party asserting such interest consents. Here, the Secured Creditor consents to a sale of the property under Section 363(f)(2) of the Bankruptcy Code, free and clear of all liens, claims, encumbrances, and interests. Attached as Exhibit C is the letter of consent/approval from the Secured Creditor.

13. Section 363(m) of the Bankruptcy Code protects a good faith purchaser's interest in property purchased from a debtor notwithstanding that the sale conducted under section 363(b) was later reversed or modified on appeal. The Trustee asserts the sale of the Property utilized a competitive and transparent marketplace that facilitated an arm's-length sale without fraud or collusion. Accordingly, the Trustee requests the Court find that the purchaser be entitled to the protections of Section 363(m) of the Bankruptcy Code.

14. The Trustee has determined, based upon a review of Claims Register, there will be a meaningful distribution to creditors, so in her opinion the proposed sale is in the best interest of the estate and its creditors.

15. The Trustee desires the sale proceeds to be paid by the closing agent, Brightline Title, 5405 Cypress Center Drive, Suite 150, Tampa, FL 33609, on behalf of the Trustee as follows: a) all normal and usual selling and closing costs, including the 6% realtor commission to BK Global Real Estate Services ("BK Global") and REMAX of Great Falls; b) all outstanding taxes and real property assessments against the property; c) the carve-out of \$15,875.00 to the Trustee, d) the balance to the secured creditor Mr. Cooper.

16. The Trustee requests the Court: (a) waive the 14 day stay pursuant to Rule 6004(h), deem the sale order enforceable immediately upon entry, and authorize the Trustee to close on the sale immediately upon entry of the Order; (b) authorize the Trustee to take all actions and execute all documents she deems reasonable, necessary and/or desirable to effectuate the requested relief; (c) retain sole and exclusive personal subject matter jurisdiction to implement, interpret and enforce the terms of the this Motion and the Order; and (d) adjudicate all claims, controversies and/or disputes arising from or related to the proposed sale.

**WHEREFORE**, Trustee respectfully requests the Court enter an Order approving the short sale of the Property pursuant to the terms and conditions set forth above and pursuant to Sections 105 and 363 of the Bankruptcy Code and for such other and further relief as this Court deems proper.

Dated this 31<sup>st</sup> day of July, 2019.

Rebeck & Crum  
An Association for the Practice of Law

/s/ Darcy M. Crum  
Darcy M. Crum  
Attorney for Trustee

**NOTICE OF OPPORTUNITY TO RESPOND  
AND REQUEST A HEARING**

**The Trustee has requested the Court shorten time to file a responsive pleadings to August 10, 2019. If you object to this motion, you must file a written responsive pleading and request a hearing within the approved time limit. The responding party shall schedule the hearing on the motion and shall include in the caption of the responsive pleading in bold and conspicuous print the date, time and location of the hearing by inserting in the caption the following:**

**NOTICE OF HEARING**

**Date:** \_\_\_\_\_

**Time:** \_\_\_\_\_

**Location:** \_\_\_\_\_

**If no objections are timely filed, the Court may grant the relief requested as a failure to respond by any entity shall be deemed an admission that the relief requested should be granted.**

DATED this 31<sup>st</sup> day of July, 2019.

Rebeck & Crum  
An Association for the Practice of Law

/s/ Darcy M. Crum  
Darcy M. Crum  
Attorney for Trustee

### CERTIFICATE OF SERVICE

Under penalty of perjury, I hereby certify a true and correct copy of the foregoing was served electronically by the Court's ECF notice to all persons/ entities requesting special notice or otherwise entitled to the same and that in addition service by mailing via first-class United States Mail, postage prepaid, was made to the following persons/entities who are not ECF registered users this 31<sup>st</sup> day July, 2019:

Ally Bank  
PO Box 130424  
Roseville, MN 55113-0004

Capital One Bank (USA), N.A.  
by American InfoSource as agent  
PO Box 71083  
Charlotte, NC 28272-1083

Department Stores National Bank  
c/o Quantum3 Group LLC  
PO Box 657  
Kirkland, WA 98083-0657

MERRICK BANK  
Resurgent Capital Services  
PO Box 10368  
Greenville, SC 29603-0368

Navient Solutions, LLC. On behalf of  
Department of Education Loan Services  
PO BOX 9635  
Wilkes-Barre, PA 18773-9635

PYOD, LLC  
Resurgent Capital Services  
PO Box 19008  
Greenville, SC 29602-9008

Quantum3 Group LLC as agent for  
Comenity Capital Bank  
PO Box 788

Kirkland, WA 98083-0788

Synchrony Bank  
c/o PRA Receivables Management, LLC  
PO Box 41021  
Norfolk VA 23541-1021

WESTMARK CREDIT UNION  
PO BOX 2869  
IDAHO FALLS ID 83403-2869

DONNA B MOHLER  
6850 BLACK POWDER RD  
MORGAN, UT 84050-9740

SEAN M MOHLER  
316 TALON DR  
GRAND JUNCTION, CO 81503-3831

IRS  
PO Box 802501  
Cincinnati, OH 45280-2501

BK Global  
1095 Broken Sound Pkwy NW, Suite 100  
Boca Raton, FL 33487

ReMax of Great Falls  
Attention: Kelcie Van Voast  
920 Central Avenue  
Great Falls, MT 59401

/s/ Darcy M. Crum